

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.4381 of 2013 and
M.P.No.1 of 2013

1. Palanal

2. Palaniammal

3. Ranganathan

... Petitioners

v.

1.Peria Ponnusamy

2. R.Ayyammal

3.Sarasammal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.06.2013 passed by the District Munsif cum Judicial Magistrate of Mettupalayam in I.A. No.10 of 2012 in O.S.No.40 of 2008 on the file

For Petitioners : Mr.V. Nicholas

For Respondent : Mr.B.Gnanavinothan – for R2 & R3

No Appearance – for R1

ORDER

Challenging the order passed in I.A. No.10 of 2012 in O.S.No.40 of 2008 [originally numbered as O.S.No.188 of 1994], on the file of the District Munsif cum Judicial Magistrate Court, Mettupalayam, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.40 of 2008 for partition and for other reliefs. The defendants filed their written statement and are contesting the suit.

3. During the pendency of the suit, the 1st defendant, viz., Raman, had died and the plaintiffs took out an application in I.A. No.10 of 2012 to bring on record the alleged legal representatives of the deceased Raman, viz. Ayyammal and Sarasammal, who are the 2nd wife of the deceased and the daughter of the deceased born through the 2nd wife, respectively. The 1st plaintiff is the mother of the deceased Raman, the 2nd plaintiff is the sister of deceased Raman and the 3rd plaintiff is the son of the deceased Raman born through the 2nd wife, viz., Ayyammal.

The defendants 2 and 3 are the sons of deceased Raman born through his 1st wife, who pre-deceased him.

4. The 2nd defendant filed his counter in I.A.No.10 of 2012 stating that the proposed defendants, viz. Ayyammal and Sarasammal along with the 1st and 3rd plaintiffs in O.S.No.40 of 2008, have filed the suit in O.S.No.373 of 2011 on the file of the District Munsif Court, Mettupalayam, to declare them as well as the 1st respondent, viz., Peria Ponnusamy as the legal representatives of the deceased Raman. Further, the 2nd defendant has stated that since the proposed respondents along with the other parties have filed a separate suit to declare them as legal representatives of the deceased Raman, the present application filed by the plaintiffs to bring them on record as the legal representatives of the deceased Raman should be dismissed.

5. The Trial Court, taking into consideration the case of both the parties, dismissed the application, finding that the issue involved in the application can be decided only after the disposal of the suit in O.S.No.373 of 2011.

6. The reasoning given by the Trial Court is perfectly correct. Since the issue involved in the present application in I.A.No.10 of 2012 can be decided only after the disposal of the suit in O.S.No.373 of 2011, I am not inclined to interfere with the order passed by the Trial Court.

7. The learned counsel appearing on either side submitted that the suit in O.S.No.373 of 2011 have already been argued and the suit is reserved for judgement.

8. In such view of the matter, I direct the District Munsif Court, Mettupalayam, to pronounce the judgment in O.S.No.373 of 2011, within a period of 10 days, from the date of receipt of a copy of this order. In the event of the suit in O.S.No.373 of 2011 being decreed by the Trial Court, in that case, liberty is given to the petitioners to file a fresh application before the Trial Court, to bring on record the proposed respondents, viz., Ayyammal and Sarasammal as defendants in O.S.No.40 of 2008. In the event of the suit in O.S.No.373 of 2011 being dismissed by the Trial Court, in that case, the application in I.A.No.10 of 2012 should also be dismissed. Since the suit in O.S.No.40 of 2008 [originally

numbered as O.S.No.188 of 1994] is pending for nearly 25 years, I direct the District Munsif cum Judicial Magistrate Court, Mettupalayam, to dispose of the suit in O.S.No.40 of 2008, within a period of six months, from the date of receipt of a copy of this order.

With these observations the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

19.09.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

The District Munsif cum Judicial Magistrate Court,
Mettupalayam,

C.R.P.(NPD).No.4381 of 2013

M.DURAIWAMY, J.

Rj

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